

*Application Serial No.: 09/966,324*  
*Amendment and Response dated January 29, 2004*  
*Reply to Office Action dated October 29, 2003*

### **REMARKS**

With entry of this amendment, Claims 1-12 and 14-17 are pending. Claims 1, 6, and 9 have been amended and Claims 14-17 have been added. Support for the amendments to the claims can be found in the original drawings, specifically Figs. 1, 4, 5, and 6; and throughout the specification. No new matter has been added by these amendments. Applicant respectfully requests reconsideration of the present claims in view of the following remarks.

#### **I. Withdrawal of "Final" Designation**

Further to Examiner Comstock's conversation with Ms. Quicker on November 7, 2003, it is our understanding that the October 29, 2003 Office Action is not to be considered a "Final" Office Action.

#### **II. Prior Art Rejections**

##### **Rejection of Claims 6-8 under 35 U.S.C. 102(b)**

In the October 29, 2003 Office Action, the Examiner rejected Claims 6-8 under 35 U.S.C. §102(b) as being anticipated by Frederics (1,940,451). More specifically, the Examiner stated that Frederics discloses a hair roller 19 having notches 39 and 22 on each end, and a base implement having a cradle with cut-out shoulders 26, 20 at each end of a support rod 11. The support rod is connected to the ends in a middle portion of the ends. The support rod includes a support arm 27. Frederics also discloses using the device for a permanent waving operation with heat. Applicants respectfully traverse.

In order for a rejection to be proper under 35 USC 102(b), each and every element of the claimed invention must be recited in the cited reference. The present invention

comprises as currently claimed, comprises a base implement capable of receiving a compressible roller body wherein said hair roller includes a first notch and a second notch; a base implement including a first end and a second end wherein both said first and second ends each include a cradle for receiving said notches; and a support rod connecting said first end and said second end wherein said base implement is constructed and arranged such that said support rod is connected in a middle portion of said first and second ends; and a method of using the same. Frederics fails to disclose a compressible roller body and as such fails to anticipate the invention as currently claimed.

The compressible roller body imparts at least one unique aspect to the present invention: in a preferred embodiment, the roller body is made of a material that is malleable so that, when heat is applied, either chemically or conductively by a heating means, the roller body gently expands thereby applying pressure to the hair. The compressible feature of the roller body, resulting from the hollow core, functions somewhat similarly to a balloon: since the core contains air, when pressure is applied to one area, the air that is displaced moves to another area. Also exposure to heat causes the air to expand and move. The result of this feature is that pressure is uniformly distributed on the hair. Frederics fails to discuss, teach or suggest this important aspect and therefore fails to anticipate the invention as currently claim.

In light of the foregoing therefore, applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 6-8 under 35 U.S.C. §102(b).

Rejection of Claims 1-5 and 9-12 under 35 U.S.C. 103(a)

In the October 29, 2003 Office Action, the Examiner rejected Claims 1-5 and 9-12 under 35 U.S.C. 103(a) as being unpatentable over Frederics (1,940,451) in view of Miller et al. (3,065,758). According to the Examiner, Frederics discloses the claimed invention except for the compressible roller body and Miller et al. disclose a similar device having a compressible body component made of flannel, to act as a shock

absorber and properly distribute stresses through the user's hair and reduce damage to hair. The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hair roller and base implement of Frederics with a compressible roller body in view of Miller et al. in order for the roller body to act as a shock absorber and to properly distribute stresses though the user's hair and reduce damage to hair. Applicant respectfully traverses.

Miller et al. fail to disclose a compressible roller that is similar to the compressible roller of the present invention. As stated by the Examiner, the Miller et al. roller is compressible, but being comprised of flannel, its function is totally distinct from that claimed herein. More specifically, the Miller et al. roller is intended to act as a shock absorber, it has the ability to 'take-in' force, fluid, internalize pressure that is applied to it: "Since the pad is made of flannel or other suitable porous material, it will allow for good **absorption** of the fluids and their penetration to the hair shafts." (column 3, lines 20-23, emphasis added). In contrast, the compressible rod of the present invention is particularly used so that it can **expand** and impose pressure and 'stress' on the hair around it (specification page 4, line 19). Therefore, whereas the Miller et al. compressible rod is intended to **absorb** and **internalize** pressure, the compressible rod of the present invention is intended to do the opposite, i.e. **expand** and uniformly distribute and **impose** pressure. Unlike Miller et al. the compressible roller body of the present invention comprises a hollow core that contains air. As discussed above, since the core contains air, when pressure is applied to one area, the air that is displaced moves to another area. The result of this feature is that pressure is uniformly distributed on the hair. Accordingly, one skilled in the art would not be motivated to adopt the feature of one device to accomplish a completely opposite function in another device.

In light of the foregoing, applicant respectfully submits that one skilled in the art would not be motivated to combine Frederics and Miller et al. to arrive at the invention as

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currently claimed. Applicant requests therefore, that the rejection of Claims 1-5 and 9-12 under 35 U.S.C. 103(a) be removed.

## **II. Conclusion**

For at least the reasons given above, Applicant submits that Claims 1-17 define patentable subject matter. Accordingly, Applicant respectfully requests allowance of these claims.

The foregoing is submitted as a full and complete Response to the Office Action mailed October 29, 2003, and early and favorable consideration of the claims is requested.

Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Examiner is respectfully requested to contact Applicant's representative at the telephone number listed below.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,



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